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IDAHO PUBLIC  
UTILITIES COMMISSION

Chas. F. McDevitt  
Dean J. (Joe) Miller

October 10, 2008

***Via Hand Delivery***

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington St.  
Boise, Idaho 83720

TTS-W-08-01

Re: Teton Springs Water and Sewer LLC

Dear Ms. Jewell:

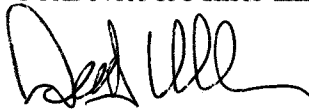
Jean Jewell

Enclosed for filing in the above matter please find (1) Reply Comments of Teton Springs Water and Sewer Company, LLC, (2) Affidavit of Jon Pinardi, (3) Affidavit of Larry Crowley. Also enclosed are workpapers supporting Exhibit No. 10, which is attached to the Reply Comments.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh  
Enclosures  
C: Teton Water and Sewer LLC

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IDAHO PUBLIC UTILITIES COMMISSION

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*Attorneys for Teton Springs Water & Sewer Company*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF	)	Case No. TTS-W-08-01
TETON SPRINGS WATER AND SEWER	)	
COMPANY LLC, INC, FOR THE ISSUANCE	)	<b>REPLY COMMENTS OF TETON</b>
OF A CERTIFICATE OF PUBLIC	)	<b>SPRINGS WATER &amp; SEWER LLC</b>
CONVENIENCE AND NECESSITY, FOR	)	
APPROVAL OF RATES AND CHARGES FOR	)	
WATER SERVICE, FOR APPROVAL OF	)	
RULES AND REGULATIONS GOVERNING	)	
THE RENDERING OF WATER SERVICE.	)	
_____	)	

COMES NOW Teton Springs Water and Sewer LLC (“Teton Springs”) and, in response to the Comments of Commission Staff filed in Case No. TTS-W-08-1 and dated September 5, 2008, (“Staff Comments”) submits the following Reply Comments, to wit:

**Introduction**

In its Application, Teton Springs proposed an annual revenue requirement of \$298,082 to be recovered, in part, by an “Availability Charge.” The Staff Comments recommend an annual revenue requirement of \$127, 527 to be recovered by a series of charges based on service requirements and meter size. Staff further recommends that the Company be ordered to install meters on previously connected services without providing adequate rate levels for collecting the revenues necessary to recover the costs associated with this requirement.

The Staff Comments conclude with a series of fourteen (14) Recommendations listed on pages 22 and 23 of Staff Comments.

Teton Springs agrees with the following numbered Staff Recommendations:

2. Authorized to earn a 12% rate of return on rate base;
8. Regularly record all well flow production information ....;
11. Update billing documentation to include the date of billing and all contact information;
12. Update termination notices to include Commission-approved reconnection charges;
13. Devise rules summary and send to all customers annually.

The remaining numbered Staff recommendations address the calculation of the Company's annual revenue requirement that should be approved by the Commission; how that revenue requirement should be recovered through rates; and other system or operating issues including the obligatory installation of water meters.

In addition to the above-listed Staff recommendations, the Company also accepts some of the accounting adjustments outlined by the Staff on Attachments A through F of Staff Comments including the following;

- 1) The Company accepts Staff adjustments 1, 2, 3, 6 and 8 shown on Attachment A of Staff Comments.
- 2) The Company accepts the schedule of rate base adjustments and depreciation schedule shown on Attachment B of Staff Comments.
- 3) The Company accepts, in concept, the calculations shown on Attachment C of Staff Comments.

- 4) The Company accepts the “*Typical Customer Meter-and-Service Equivalent Ratios*” shown on Attachment E and the application methodology of those ratios as shown on Attachment F of Staff Comments.

As will be discussed in more detail in these Reply Comments, if accepted by the Commission, the Staff’s other recommendations would place Teton Springs in the situation of being financially unviable and would place severe operating and financial burdens on Teton Springs which would likely result in the failure of Teton Springs within a short period of time.

The major issues regarding the determination of the Company’s annual revenue requirement and recovery thereof are as follows:

1. Whether Teton Springs should be allowed an annual expense for the amortization of contributed capital.
2. Whether Teton Springs should be allowed to recover a portion of the annual revenue requirement through an “availability charge”.
3. Whether Teton Springs should be required to install meters without rates in place that provide for the recovery of the costs associated with the installation of the meters (as well as the costs of reading the meters).
4. Whether Staff’s proposed complete disallowance of rate case expense is reasonable.

These issues are discussed below.

In addition, Staff proposes a number of accounting adjustments to the Company’s rate base and expense accounts. As previously discussed, Teton Springs agrees with some of the Staff’s accounting adjustments and disagrees with other Staff adjustments. These are also discussed below.

Attached to these Reply Comments, for ease of reference, is an Exhibit identified as Exhibit No. 10 consisting of two pages and entitled “Summary of Adjustments & Revenue Requirement on Rebuttal”. Column 1 of this Table shows the Company’s original proposed values for each component of rate base, revenues and expenses presented in accordance with the Uniform System of Accounts (“USOA”); column 2 shows Staff’s adjustments to each line item or account; Column 3 shows Staff’s adjusted results of operation and annual revenue requirement (page 2, line 45); Column 4 shows the Company’s rebuttal adjustments; and Column No 5 shows the Company’s adjusted results and revenue requirement on rebuttal. As can be seen in Column No 5, page 2, line 45 Teton Springs is proposing, in rebuttal, an annual revenue requirement of 259,256.

### **Argument**

**1. The Company should be allowed an annual expense for the amortization of contributed capital.**

In its Application, Teton Springs proposed that it be allowed an annual amortization expense calculated by the application of industry-standard depreciation rates applied to contributed property that makes up almost the entirety of the Company’s plant in service. The Staff Comments point out, and Teton Springs concedes, this proposal differs from prior Commission precedent.

Yet, unlike courts, which must follow prior precedent under the doctrine of *stare decisis*, the Commission is not so strictly constrained to rigidly follow prior precedent:

“Because regulatory bodies perform legislative as well as judicial functions in their proceedings, they are not so rigorously bound by the doctrine of *stare decisis* that they must decide all future cases in the same way as they have decided similar cases in the past”. *McNeal v. Idaho Public Utilities Commission*, 142 Idaho 685, 132 P.3d 442 (2006).

What is required is, when departing from prior precedent, is that the Commission must provide a reasoned explanation for the departure:

“If however, the IPUC decides a case in a manner contrary to prior IPUC rulings, the Court will consider whether the IPUC has adequately explained the departure from prior rulings so that a reviewing court can determine that the decisions are not arbitrary and capricious”. *Roesebud Enterprises v. Idaho Public Utilities Commission*, 128 Idaho 609, 917 P.2d 766 (1996).

Based on the following analysis, Teton Springs respectfully requests that the Commission consider the merits of the Company’s proposal and adopt it, notwithstanding prior precedent.

The first step of the analysis begins with the observation that the fundamental premise of public utilities regulation is the assumption that regulated companies will finance themselves with investor supplied capital. In Idaho this can be seen in the list of entities the Commission does not regulate because the entities are financed by something other than investor supplied capital—municipal corporations, mutual nonprofit cooperatives and not-for profit companies. *See Idaho Code 61-104.*

Rate of Return Regulation (“RORR”) is founded on the fundamental premise that the utility will finance itself with investor supplied capital. In its most basic form, RORR quantifies the amount of investor supplied capital (the rate base) and then provides for a return on the investor supplied capital through an allowed rate of return and for a return of the investor net supplied capital after depreciation. In this way, RORR aims to create a utility that is financially viable and able to attract capital while guarding against customer abuse by preventing excessive returns. In return, the utility undertakes to serve in the public interest.

There is, however, a type of utility that does not fit with the fundamental assumption of investor supplied capital—companies that finance themselves not with investor supplied capital

but with capital provided by customers or developers, referred to herein as “contributed capital utilities.”

The basic question Teton Springs is proposing to the Commission is whether it is sensible and desirable to rigidly apply RORR to contributed capital utilities when the fundamental assumption of RORR (investor supplied capital) is inapplicable to contributed capital utilities. Teton Springs suggests rigid application of RORR to contributed capital utilities is like refereeing a soccer game using the rules for a football game.

Rigid application of RORR to contributed capital utilities has undesirable results. Because, under strict application of RORR, contributed capital utilities have little or no rate base, they have little or no return and little or no annual depreciation expense. In effect, contributed capital utilities are allowed to recover their annual operating expense, as estimated at a point in time in a rate case, and not much more. In this case, for example, under Staff’s rigid application of RORR, Teton Springs is allowed a net of only \$7,000 on a revenue requirement of approximately \$127,527.

This, in turn, leads to the creation of companies that are continually under-capitalized and perpetually teetering on the brink of non-viability. An example with which the Commission is recently familiar is Eagle Water Company. Because Eagle Water Company is primarily a contributed capital utility, when faced with the need to make system improvements, it lacked the cash flow or borrowing ability to make them, leading to service moratoriums and DEQ interventions for public safety reasons.

What Teton Springs has proposed is a minor modification to strict RORR that would allow an annual amortization expense of contributed capital. Much like depreciation expense of investor supplied capital, it would provide a source of funds aimed at both providing a degree of

financial stability and providing ability to respond to contingencies such as unexpected necessary repairs or improvements.

To guard against misuse, Teton Springs proposes to treat revenues generated by the amortization expense much like a depreciation reserve account pursuant to Idaho Code 51-525, which provides in part:

DEPRECIATION ACCOUNT. The Commission shall have power, after hearing, to require any or all public utilities.... to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of accounts as the Commission may prescribe. The Commission may from time to time ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of the earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement as the Commission may prescribe. The income from investments of moneys in such public fund shall likewise be carried in such fund.

In this way, revenues and expenses associated with the amortization would be subject to Commission oversight and audit by Commission Staff. And, at some point in the future, if in the judgment of the Commission the reserve has reached an adequate level, rates can be adjusted to reduce the annual amortization expense.

The amount of the requested amortization is also reasonable. The proposed annual expense is not simply an estimated number, but is tied to standard depreciation lives of the various categories of plant in service. (*See*, Direct Testimony of Larry Crowley and Exhibit No. 7, page 10).

Teton Springs' proposal is an alternative to the practice of granting emergency surcharges when unexpected needs arise. Again, the Commission's recent experience with Eagle Water Company is instructive. There, when system improvements were required, the Company and the Commission were forced through a cumbersome, time consuming and expensive process of analyzing the need for a surcharge, quantifying its amount and monitoring its collection.



Quality of service to customers suffered in the meantime. (*See, In the Matter of Eagle Water Company*, Case No.EAG-W-07-01; *In The Matter of Eagle Water Company*, Case No. EAG-W-05-05; *In the Matter of Eagle Water Company*, Case No. EAG-W-08-01).

Emergency surcharges are a poor way of dealing with the problems of undercapitalized contributed property utilities. Teton Springs' proposal offers a more expedient approach that entails less regulatory intervention while preserving accountability, assuring maintenance of adequate service to customers and maintaining a reliable and constant revenue stream that would allow the Company to remain a financially viable service provider. In addition, emergency surcharges do not provide adequate revenues to cover emergency requirements for a Company like Teton Springs that bills its customers on a quarterly basis; In other words, Teton Spring has an uneven revenue stream that impairs its ability to meet its financial needs in a timely fashion.

Staff Comments suggest that Commission Rule 103, relating to presumptions for small water companies requires a different result. Staff Comments, however, neglect to observe that the phrase "small water Company" is a defined term within the Commission rules. Rule 101 defines small water companies as those with annual revenues of less than \$50,000 and providing service to less than 300 customers. Teton Springs is not a small water Company within the meaning of Rule 103<sup>1</sup>.

The Staff Comments further oppose the Company's proposal stating, "Staff's recommended revenue requirement should provide the Company with adequate funding to satisfy the Company's need for cash flow and financial stability." (Staff Comments Pg. 4). This cannot possibly be true. Among other things, the Staff recommendations allow for a net return on investment of only \$7,100 while at the same time requiring the Company to incur

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<sup>1</sup> Whether Teton Springs is or is not a "small water Company" may be academic as the Company has conceded that most of its plant is service is contributed. In either event, Rule 103 is irrelevant as to whether the Company's amortization proposal has merit.

approximately \$45,000 in expenses to install meters without providing the revenue requirements and rate levels required to fund this metering obligation. The Staff recommendation further disallows the Company's prudently incurred expense of preparing and presenting this rate case. This results in confiscation and would therefore place the Company at great financial risk. If these recommendations (and others) are accepted, Teton Springs will be non-viable the moment the Commission issues its final order.

Teton Spring's proposal, in concept, is not dissimilar to a sinking fund--an amount of money or fund, set aside and dedicated solely for system repairs, improvements and contingencies. The Commission has recently indicated it is not generally opposed to the concept of sinking fund. (*See, In the Matter of the Application of Mayfield Springs Water Company, Case No. MSW-W-08-01, Order No. 30628*). Teton Spring's proposal is unique in the way it proposes to collect monies for the fund. The proposed annual expense is derived from standard depreciation schedules for water utilities rather than some arbitrary method. These schedules, in turn, reflect the expected useful life of various plant categories. In this way the amount collected is synchronized with accepted projections of when funds will be necessary for replacement or repair.

Finally, it should be noted that the Teton Springs is not requesting a return on non-investor supplied capital. Rather the Company is proposing a funding mechanism aimed at producing an adequate revenue requirement that will enable it to remain a viable going concern and to provide the level of service that is expected and that it desires to provide.

**2. Without an "Availability Charge" unfair rate disparities will result.**

In its Application, the Company proposed an availability charge of \$75.00 per quarter for residential lots and \$225.00 per quarter for commercial lots. Staff Comments oppose the

charge, not because Staff disputes the wisdom of the charge, but because of prior Commission decisions where arguably similar charges have been rejected.

As noted, above, however, the Commission, unlike courts, is not rigidly bound to prior precedent and may depart from it when there is an articulated reason for doing so. In the unique circumstances of this case there is good reason to depart, even assuming the prior decisions are not distinguishable, as Teton Springs believes they are and which is discussed below.

The uniqueness of the Teton Springs Resort development and the rationale for an availability charge are explained in the Direct Testimony of Jon Pinardi, the Company's Manager:

Q. In the Company's proposed Rate Schedule No.1, Flat Rate Service, there is reference to an "Availability Charge". Please explain this charge.

A. The Availability Charge is a rate charged to each customer's premises located within the Teton Springs Community that can be connected to the Company's water system but which has not yet connected to the system.

Q. Does an availability charge recognize the fact that it was necessary to install the entire water system and the front-end of development, rather than build it out over time?

A. Yes. As a large scale mixed-use seasonal resort community in a rural setting, to properly develop the land at a level that could be adequately marketed with the full breadth of residential types, and recreational amenities in place, it was necessary to install the entirety of the utility infrastructure generally at one time. In a typical residential development, the utilities are added in phases as property is sold and homes are constructed. In the case of typical developments, there is proportionality between the size and operational scope of the system and the number of users paying for the service. In our situation, we must operate and maintain the full scale of the utility, but with only a fraction of the potential users providing revenue into the system. There is no direct proportionality between the size and operating cost of our system and the number of "active" users. In our case only 35% of the users have built homes and, if those 35% were required to bear the full burden of the system, they would be required to pay an amount that would not be fair for them. In equality, therefore, we propose that an "availability" fee be paid by those property owners that have not yet built homes, so the full burden doesn't fall on those that have.

Q. Does an availability charge recognize the fixed nature of water utility system costs? Yes. The operating and maintenance costs associated with a water system are largely fixed. Typically, the only major variable expenses relate to the energy required to produce the water from the wells and the cost of disinfection which is tied to the number of gallons produced. This creates the situation where the costs of operation are largely set, regardless of the number of customers. Again, if a small number of customers were required to bear the full burden, without assistance from all of the potential users of the system, the cost would be grossly unfair to this smaller group.

Q. Would an availability charge help preserve the financial integrity of the utility?

A. Yes. An availability fee would preserve the fiscal integrity of the system, thereby ensuring that high quality water services, meeting all current and future regulatory and safety requirements, are readily available when the lot owners are ready to build on their lot and connect to the system. Having readily available water service is a benefit to all lot owners, irrespective of whether or not they are receiving water service currently. Additionally, because the water has been installed to every property to provide easy and immediate access to those owners when they desire it, having those owners not share in the burden of the utility may unjustly enrich them. If the financial viability of the system is jeopardized, and the availability of water service and its quality is compromised, this has a corresponding negative impact on all property owners, regardless of whether they are currently connected to the system. Once full or substantially full occupancy of the PUD has been achieved, it is anticipated that the availability fee can be substantially reduced or eliminated in its entirety.

Q. Would an availability fee recognize the seasonal nature of occupancy by some homeowners?

A. Yes. Because of the seasonal nature of our owners occupancy, many of them choose to turn their water service on and off throughout the season when the home is not occupied. Without an availability fee, the system revenue stream would be adversely impacted and confidence in adequate revenues to maintain the fiscal integrity of the system would be compromised. In a typical residential subdivision setting, large numbers of users do not regularly discontinue water service and cease payment. In our case, this does occur.

Q. Does an availability fee recognize that some properties might not be improved until several years in the future?

A. Yes. Many owners of the land have purchased for the purpose of long-term investment and speculation. Some have purchased with the intent of NOT developing the land, and keeping it in open space. Both of these situations add to the issue of considerable land not having homes constructed for years, if not decades to come. Without these properties being developed and becoming active

water users, again, in the absence of an availability fee as a means to share the operating burden, those who have chosen to develop would be treated unfairly by having an arbitrarily high cost for water service and the fiscal integrity of the system would be jeopardized.

In similar circumstances other regulatory Commissions have approved availability charges for stand-alone utilities that serve only a single resort development. Attached hereto as Exhibit 11 is an Order of The Wyoming Public Service Commission approving an availability charge. In that case the utility, Gros Ventre Utility, provided service to resort subdivisions similar to the Teton Springs development.

The Staff Comments also point to the recent case of Mayfield Springs Water to support its opposition to the availability charge. There, however, an inactive customer charge was proposed by an intervenor who designed the charge based on factors not subject to Commission jurisdiction. The Commission rejected the charge not based on a conceptual objection to such charges, but because it was designed taking into account inappropriate considerations. “While Mr. Covino’s suggestion is innovative, it takes into account consideration outside the Commission’s jurisdiction.” In *The Matter of the Application of Mayfield Springs Water Company*, Case No. MSW-W-08-01, Order No. 30628, Pg 13.

Staff Comments also rely on an older Commission Order, Order No. 17536.2 Teton Springs believes the Hayden Pines case is distinguishable for at least three reasons. First it did not involve a utility serving a resort community which must construct its entire water system as one project, not in phases. Second, it did not involve a utility that bills on a quarterly basis and does not have monthly cash flow to sustain its operations. Third it did not involve a utility that may be facing stagnant or declining customer growth. (*See Affidavit of Jon Pinardi*).

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<sup>2</sup> The case citation for this Order in Staff Comments is incorrect. Staff Comments connect the Order to a case relating to Mountain View Terrace Water system (1994). In fact, Order No. 17536 was issued in 1982 in a case involving Hayden Pines Water Company, *In the Matter of the Application of Hayden Pines Water Company*, Case No. U-1121-20.

**3. The Staff recommendation for installation of meters is confiscatory.**

As noted in Staff Comments the first approximately 50 homes the Company connected to its system and all commercial customers do not have meters. Staff Comments then recommend, “Staff recommends that the Company install meters in all customer service lines previously connected for better system management and future rates design.” Staff Comments, Pg.12. Staff Comments, however, do not make any provision for the recovery of the cost of installing these meters. Teton Springs estimates the cost of such project would be \$37,000. (See Affidavit of Jon Pinardi).

It is a fundamental principle of public utility law that a private Company cannot be compelled to devote property to public service to or incur expense without adequate compensation and attempts to compel investments or expenses without compensation constitute an impermissible taking. (*See Hayden Pines Water Company v. Idaho Public Utilities Commission* 122 Idaho 356, 834 P. 2d 873 (1992)). There, the Commission required the Company to employ an accountant without providing a funding source therefore and the Court held this constituted a “taking”.

Accordingly, the Commission should reject this recommendation

**4. Staff’s recommended disallowance of rate case expense is unreasonable and unprecedented.**

The Staff proposes the complete disallowance of rate case-related expenses incurred by the Company to make its obligatory filings before the Commission. (*See*, Staff Comments, Pg. 6—7, Staff Adjustment No 7, Attachment A to Staff Comments). Staff’s apparent rationale is that because Teton Springs proposed an amortization expense with which Staff disagrees, the Company should be penalized by denying it the ability to recover rate case expenses. “Staff is opposed to any recovery for those costs (amortization) and believes it inappropriate to allow

recovery of rate case costs incurred to address this issue.” (See Staff Comments, Pg. 7). There are several problems with the Staff logic.

First, the Commission has always recognized that rate case expense is a legitimate cost of doing business as a regulated utility and, to our knowledge, has never conditioned recovery on whether positions taken by the utility were meritorious. (See e.g., *In the Matter of the Application of United Water Idaho Inc.*, Case No. UWI-W-04-04), Order No. 29838, where the Commission allowed documented rate case expense even though many of United Water’s positions in that case were rejected). From Teton Springs’ point of view, the Staff seems content to rely on prior Commission precedent when it suits their purpose (see discussion of Availability Charge *infra.*) but to ignore prior practice when it does not serve their purpose, which appears, to Teton Springs, to be to drive the allowed annual revenue requirement to the lowest possible point, just short of confiscation.

Second, Teton Springs’ advocacy on the amortization issue was only a small part of the effort required to assemble and present this rate case. For example, because this is the Company’s first rate case, it was necessary for the Company’s consultant, Mr. Larry Crowley, to completely re-cast the Company’s books to conform to the Uniform System Accounts and to create a separation model that allocated costs between the water and sewer divisions. This allowed the Company to present a set of financial exhibits that are equal in quality to those presented by much larger companies regulated by the Commission. (See, Exhibits 5 through 9 accompanying Direct Testimony of Larry Crowley). In consequence, Staff did not have to reconstruct the Company’s financial records, as is often required for many, less sophisticated, water utility companies.

Third, the Staff recommendation is inconsistent with other recent positions taken by Staff. Two weeks after filing Comments in this case, Staff filed Comments in the Atlanta Power

Company rate case, in which it did not object to the recovery of rate case expenses, even though it disagreed with positions advanced by Atlanta Power. (*See, In the Matter of the Application of Atlanta Power Company*, Case No. ATL-E-08-02, Staff Report and Recommendation, September 18, 2008).

Fourth, the Staff proposal is bad for regulation. If companies that desired to present proposals they believed would improve the regulatory process knew they risked rate case expense disallowance, they would be less likely to make such proposals. Punishing companies for making proposals, even if the proposal turns out to be unacceptable, is a policy the Commission should avoid.

Finally, the Company has proposed to amortize its rate case expenses over a three-year period rather than just one year. This practice has been approved by the Commission in many other cases where similar requests have been made.

In short, the Staff recommendation on this issue is punitive, opportunistic and inconsistent with prior Commission practice.

**5. Staff's proposed disallowance of engineering fees should not be accepted.**

As set forth in the Affidavit of Larry A. Crowley, engineering services incurred by the Company contributed to the preparation of Mr. Crowley's rate case exhibits. The report provided by CH2MHILL included an inventory of all assets and plant in service and accurate system maps. Without the information provided by CH2MHILL, Mr. Crowley would have been required to re-construct that information.

**6. A proper allowance for meter reading expense should be approved.**

Staff is recommending that the Company read all water meters located at the customers' premises but did not offer any corresponding adjustment to recover the expenses associated with



this requirement. In response, Teton Springs has calculated the costs of reading meters four (4) times per year using its current operating contractor and the hourly rates charged by that contractor. (See Affidavit of Jon Pinaridi). That costs is \$9,333. On rebuttal, the Company has included this cost in O&M expense account number 601 which is shown on Page 1, Line 8 of the attached Exhibit No. 10. Also attached is the work paper that sets forth the assumptions and calculations of this expense.

**7. A reasonable allowance for recurring annual legal expenses should be approved.**

As shown on Attachment A of Staff Comments, Adjustment 4, Staff removed legal fees in the amount of \$24,640 and characterized these expenses as being non-recurring. These legal fees were incurred by the Company to in response to its normal business requirements including preparation of its Application for a Certificate of Convenience and Necessity to the Commission. The Staff has eliminated all water-related legal fees and allowed the Company to recover only \$1,332 of its total legal expenses. On rebuttal, the Company is proposing to restore just the water Company-related legal fees that represent the expected ongoing annual expense the Company will continue to incur on a regular basis. The amount of the adjustment is \$13,090 which is shown on Exhibit No. 10, page 1, Line 20.

**8. A reasonable allowance for ongoing annual regulatory expenses should be approved.**

The Company estimates that its annual costs of preparing the Commission required annual report and other Commission-related expenses will be approximately \$2,500 per year. These costs will include the Company's auditor expenses and the preparation of the annual report, other expenses associated with customer issues, additional legal fees and staff time required to respond to Commission reporting requirements.

## **9. Customer Comments.**

Staff Comments note that more than adequate notice of this general rate case was provided and that no one attended the public workshop, and as of the date of Staff Comments (September 18) no written comments were received. Staff speculates this “may be due to the fact that Teton Springs is a resort where residences are not occupied year around”. (Staff Comments Pg. 20).

As established by the Affidavit of Jon Pinardi, the residents and homeowners in the Teton Springs development are generally attentive to matters affecting the development and are vocal in expressing disagreement. A more plausible explanation for the lack of comment is the lack of objection to the proposed rates.

Since the filing of Staff Comments, the Commission has received two letters from customers. Three observations may be made regarding these letter comments.

First, both commenters are plaintiffs in pending litigation and it is reasonable to assume the commenters perceive some litigation benefit from submitting comments.

Second, neither of the commenters opposes the rates proposed by the Company.

Third, the comments do hint at one thing that is true. Teton Springs is being particularly hard hit by the deteriorating national real estate market and it is possible customer growth will be stagnant or declining in the foreseeable future. (*See* Affidavit of Jon Pinardi).

### **Request for Oral Argument**

Teton Springs requests the opportunity to present Oral Argument with respect to the Staff Comments and these Reply Comments.


### Conclusion

Based on the reasons and authorities cited herein, Teton Springs respectfully requests that the Commission approve the revenue requirement calculated in Exhibit No. 10, and authorize the Company to file rate schedules designed to recover the revenue requirement, including an availability charge.

Dated this 10 day of October, 2008

Respectfully submitted,

MCDEVITT & MILLER LLP



Dean J. Miller

McDevitt & Miller LLP

*Counsel for Greene Tree, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of October, 2008, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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Hand Delivered   
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U.S. Mail   
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By: McDEVITT & MILLER LLP

